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Error to Circuit Court of City of Richmond.

Scire facias by James Caskie, as administrator, against E. P. Cox, as administrator with the will annexed of Peter C. Warwick, to revive a judgment. The judgment was revived, and defendant brings error. Affirmed.

Willis B. Smith, of Richmond, for plaintiff in error.

Scott & Buchanan, of Richmond, for defendant in error.

PARRISH *v.* PARRISH et al.

June 11, 1914.

[82 S. E. 119.]

1. Habeas Corpus (§ 99*)—Custody of Child—Rights of Father—Discretion of Court.—While a father has a prior right to the custody of his infant child, yet where the father and mother are divorced, the court, on the father's application for custody, will exercise its discretion according to the facts, consulting the wishes of the minor, if of years of discretion, and, if not, exercising its own judgment as to what will be best calculated to promote the interests of the child, having due regard to the legal rights of the father.

[Ed. Note.—For other cases, see Habeas Corpus, Cent. Dig. § 84; Dec. Dig. § 99.* 7 Va.-W. Va. Enc. Dig. 22.]

2. Habeas Corpus (§ 99*)—Custody of Child.—On an application by a father for custody of his infant son eight years of age, facts held to justify a decree granting custody to the father during the three summer months and requiring his surrender to the mother during the balance of the year.

[Ed. Note.—For other cases, see Habeas Corpus, Cent. Dig. § 84; Dec. Dig. § 99.* 7 Va.-W. Va. Enc. Dig. 22.]

3. Habeas Corpus (§ 112*)—Custody of Child—Bond.—Where a father, after being divorced from his wife, lived in Chicago, while the wife resided in Virginia, and he applied for custody of their infant son, the court having found that he was entitled to the custody and care of the child for a portion of the year and was a proper person to be intrusted therewith, it was error to require of him a bond conditioned that he would comply with the court's order and return the child to Virginia and deliver him to the child's mother when the period of his custody expired.

[Ed. Note.—For other cases, see Habeas Corpus, Cent. Dig. § 101; Dec. Dig. § 112.* 7 Va.-W. Va. Enc. Dig. 20.]

Error to Circuit Court, Nansemond County.

Habeas corpus on petition of James S. Parrish against Fannie

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

S. Parrish and another, to secure the custody of the complainant's infant son, James S. Parrish, Jr. From a judgment dividing the custody of the child as between the petitioner and defendants, petitioner brings error. Modified and affirmed.

P. H. C. Cabell and *A. L. Holladay*, both of Richmond, and *J. H. Corbitt*, of Suffolk, for plaintiff in error.

C. V. Meredith, of Richmond, and *E. E. Holland*, *R. H. Rawles*, and *W. M. Crumpler*, all of Suffolk, for defendants in error.

CHARLES SYER & CO. *v.* LESTER.

June 11, 1914.

[82 S. E. 122.]

1. Sales (§ 52*)—Requisites and Validity of Contract—Sale Distinguished from Consignment for Sale.—Whether the relation between parties, who had made a contract whereby one was to take orders from wholesale dealers for lemons on a commission basis, in respect to 125 boxes, ordered shipped to the broker himself, in a letter with other orders to ship to wholesale dealers, was that of seller and buyer or principal and broker was to be determined, not from the letter alone, but from all the circumstances.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 118-144, 1047; Dec. Dig. § 52.* 12 Va.-W. Va. Enc. Dig. 6.]

2. Sales (§ 180*)—Performance of Contract—Delivery of Goods—Acceptance.—The buyer of 125 boxes of lemons, upon discovering that the lemons were short in count and deficient in quality, ought either to have rejected the shipment as a whole or accepted it under protest and sued for his damages, and he had no right to sell part on his own account in pursuance of an offer to deduct 40 cents per box, and reject the remainder.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 469-472; Dec. Dig. § 180.* 12 Va.-W. Va. Enc. Dig. 24, 37.]

3. Sales (§ 180*)—Performance of Contract—Delivery of Goods—Acceptance.—Where defendant, who was taking orders for lemons on commission, ordered 125 boxes shipped to himself, and plaintiff offered to deduct 40 cents per box because of deficiency as to quantity and quality, the sale of 33 boxes by defendant at the reduced price was an implied acknowledgment that their relation was that of seller and buyer, and a tacit acceptance of the compromise.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 469-472; Dec. Dig. § 180.* 12 Va.-W. Va. Enc. Dig. 24, 37.]

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